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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Pinnacle Entertainment, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	3980 Howard Hughes Parkway Las Vegas, NV 89169 UNITED STATES		

Attorney information	Erin E. Lewis Brownstein Hyatt Farber Schreck, LLP 100 N. City Parkway, Suite 1600 Las Vegas, NV 89106 UNITED STATES lvpto@bhfs.com, jobermeyer@bhfs.com, elewis@bhfs.com, lwilliams@bhfs.com, pajemian@bhfs.com Phone:7023822101
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Registrations Subject to Cancellation

Registration No	3981274	Registration date	06/21/2011
Registrant	FREKI CORPORATION N.V. Pater Euwensweg 31 (2nd Floor) Wilemstad, Curacao, AN		

Goods/Services Subject to Cancellation

Class 035. First Use: 1998/06/01 First Use In Commerce: 1998/06/01

All goods and services in the class are cancelled, namely: Administration of a program for enabling participants to obtain discounts on products and services; Advertisement for others on the Internet; Advertising and commercial information services, via the internet; Advertising and directory services, namely, promoting the services of others by providing a web page featuring links to the websites of others; Advertising and marketing services, namely, promoting the goods and services of others; Advertising and promotional services; Advertising and publicity services; Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium; Advertising by transmission of on-line publicity for third parties through electronic communications networks; Advertising on the Internet for others; Advertising services; Advertising services, namely, promoting the brands, goods and services of others; Advertising the services of others via web pages optimized for online search engines; Advertising, including on-line advertising on a computer network; Advertising, including promotion relating to the sale of articles and services for third parties by the transmission of advertising material and the dissemination of advertising messages on computer networks; Advertising, promotion and marketing services in the nature of e-mail blast campaigns for others; Contests and incentive award programs to promote the sale of products and services of others; Cooperative advertising and marketing services by way of solicitation, customer service and providing marketing information via web sites on a global computer network; Customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes; Customer service management for others; Customer services, namely, providing customer service and product inquiry services via telephone and e-mail for others; Dissemination of advertising for others via an on-line communications network on the

internet; Dissemination of advertising for others via public and private wireless networks for display on mobile devices; General business networking referral services, namely, promoting the goods and services of others by passing business leads and referrals among group members; On-line advertising and marketing services; On-line advertising on computer communication networks; On-line advertising on computer networks; On-line advertising services for others; On-line promotion of computer networks and websites; Online advertisements; Online advertising and promotional services; Online advertising via a computer communications network; Online media monitoring services using computer software to automatically monitor internet websites and online publications for customer-specified topics and to capture relevant content on those topics, and providing documentation and analysis of that online content to others for business purposes; Promoting the goods and services of others by means of distributing advertising on the Internet; Promoting the goods and services of others by means of the issuance of loyalty rewards cards; Promoting the goods and services of others through search engine referral traffic analysis and reporting; Promoting, advertising and marketing of the on-line web sites of others; Promotion, advertising and marketing of on-line web sites; Providing a web site which features advertisements for the goods and services of others on a global computer network

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)		
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)		
Registration No	3981273	Registration date	06/21/2011
Registrant	FREKI CORPORATION N.V. Pater Euwensweg 31 (2nd Floor) Wilemstad, Curacao, AN		

Goods/Services Subject to Cancellation

Class 035. First Use: 1998/06/01 First Use In Commerce: 1998/06/01

All goods and services in the class are cancelled, namely: Administration of a program for enabling participants to obtain discounts on products and services; Advertisement for others on the Internet; Advertising and commercial information services, via the Internet; Advertising and directory services, namely, promoting the services of others by providing a web page featuring links to the web sites of others; Advertising and marketing services, namely, promoting the goods and services of others; Advertising and promotional services; Advertising and publicity services; Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium; Advertising by transmission of on-line publicity for third parties through electronic communications networks; Advertising on the Internet for others; Advertising services; Advertising services, namely, promoting the brands, goods and services of others; Advertising the services of others via web pages optimized for online search engines; Advertising, including on-line advertising on a computer network; Advertising, including promotion relating to the sale of articles and services for third parties by the transmission of advertising material and the dissemination of advertising messages on computer networks; Advertising, promotion and marketing services in the nature of e-mail blast campaigns for others; Contests and incentive award programs to promote the sale of products and services of others; Cooperative advertising and marketing services by way of solicitation, customer service and providing marketing information via web sites on a global computer network; Customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes; Customer service management for others; Customer services, namely, providing customer service and product inquiry services via telephone and e-mail for others; Dissemination of advertising for others via an on-line communications network on the Internet; Dissemination of advertising for others via public and private wireless networks for display on mobile devices; General business networking referral services, namely, promoting the goods and services of others by passing business leads and referrals among group members; On-line advertising and marketing services; On-line advertising on computer communication networks; On-line advertising on computer networks; On-line advertising services for others; On-line promotion of computer networks and web sites; Online advertisements; Online advertising and promotional services; Online

advertising via a computer communications network; Online media monitoring services using computer software to automatically monitor Internet web sites and online publications for customer-specified topics and to capture relevant content on those topics, and providing documentation and analysis of that online content to others for business purposes; Promoting the goods and services of others by means of distributing advertising on the Internet; Promoting the goods and services of others by means of the issuance of loyalty rewards cards; Promoting the goods and services of others through search engine referral traffic analysis and reporting; Promoting, advertising and marketing of the on-line web sites of others; Promotion, advertising and marketing of on-line web sites; Providing a web site which features advertisements for the goods and services of others on a global computer network

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Attachments	Petition for Cancellation PINNACLE SPORTS.pdf(115529 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Erin E. Lewis/
Name	Erin E. Lewis
Date	10/12/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Pinnacle Entertainment, Inc.,
Petitioner,

v.

Freki Corporation N.V. dba Pinnacle
Sports Worldwide Corporation,
Registrant.

CANCELLATION NO. _____

Registration No.: 3,981,274
Mark: PINNACLE SPORTS AFFILIATES
Registration Date: June 21, 2011

Registration No.: 3,981,273
Mark: PINNACLE SPORTS DIRECT
Registration Date: June 21, 2011

PETITION FOR CANCELLATION

Pursuant to 15 U.S.C. § 1064, Pinnacle Entertainment, Inc. ("Pinnacle"), a Delaware corporation having its principal place of business at 3980 Howard Hughes Parkway, Las Vegas, Nevada 89169, believes it will be damaged by the continued registration of, and hereby petitions to cancel, Registration No. 3981274 for the trademark PINNACLE SPORTS AFFILIATES and Registration No. 3981273 for the trademark PINNACLE SPORTS DIRECT. Pinnacle alleges the following in support of this Petition for Cancellation:

I. BACKGROUND FACTS

A. Pinnacle Entertainment

1. Pinnacle is a leading developer, owner and operator of casino gaming resorts throughout the United States.

2. Pinnacle currently owns and operates 15 gaming entertainment properties, located in Colorado, Indiana, Iowa, Louisiana, Mississippi, Missouri, Nevada and Ohio, which Pinnacle promotes under the house mark PINNACLE ENTERTAINMENT.

3. Pinnacle owns 11 U.S. trademark registrations and six U.S. trademark applications for PINNACLE ENTERTAINMENT for goods and services offered at the Pinnacle

Properties (Reg. Nos. 4592969, 4710637, 4592968, 4592967, 4001016, 4001015, 3904415, 3904414, 4430712, 4430711, 4196579; Ser. Nos. 86174949, 86174958, 86174907, 86174896, 86196863, 86196894) (the “PINNACLE ENTERTAINMENT Marks”).

4. Pinnacle also owns U.S. trademark registrations for the marks PINNACLE CARES (Reg. Nos. 4642586, 4642585) and PINNACLE ENTERTAINMENT FOUNDATION (Reg. Nos. 4927993, 4180024) (together with the PINNACLE ENTERTAINMENT Marks, “Pinnacle Marks”).

B. Freki Corporation

5. Upon information and belief, and as stated in the records of the United States Patent and Trademark Office (“USPTO”), Freki Corporation N.V. dba Pinnacle Sports Worldwide Corporation (“Freki”) is a foreign corporation organized under the laws of Netherlands Antilles with a principal place of business at Pater Euwensweg 31 (2nd Floor) Willemstad, Curacao, Netherlands Antilles.

6. Upon information and belief, Freki was founded in 1998 and sometime thereafter began offering online gambling and online sports betting services through one or more Internet websites, including the website previously located at <https://www.pinnaclesports.com>, which presently redirects to <https://www.pinnacle.com> (the “Pinnacle Sports Website”).

7. Upon information and belief, after launching the Pinnacle Sports Website, Freki introduced an affiliate program whereby third-party affiliates (“Affiliates”) advertise the Pinnacle Sports Website and earn a commission on bets placed by new players resulting from such advertising efforts (the “Affiliate Program”).

8. Upon information and belief, Freki offered and sold online gambling, online sports betting and related services, including, without limitation, services provided through the

Affiliate Program, to United States customers through the Pinnacle Sports Website until January 11, 2007.

9. On or about January 11, 2007, Freki announced that the Pinnacle Sports Website would no longer accept bets from customers located in the United States. Attached hereto as Exhibit A is a true and accurate copy of the archived homepage of the Pinnacle Sports Website, as it appeared on January 13, 2007, displaying Freki's announcement.

10. Upon information and belief, Freki exited the United States market in response to passage of the 2006 Unlawful Internet Gambling Enforcement Act by U.S. Congress. Attached hereto as Exhibit B is a true and accurate copy of a January 12, 2007 article posted to the sports betting information website, Casinomeister.com, discussing Freki's exit.

11. Upon information and belief, since 2007, Freki has been prohibited from lawfully selling its online gambling and sports betting services to customers located in the United States.

12. United States residents are expressly prohibited from using services offered through the Pinnacle Sports Website. Attached hereto as Exhibit C is a true and accurate copy of the first two pages of the Terms and Conditions currently posted to the Pinnacle Sports Website.

13. Upon information and belief, since 2007, Freki has been prohibited from lawfully sharing betting commissions under the Affiliate Program with Affiliates located in the United States.

14. The Affiliate Program does not accept Affiliates that are based in the United States. Attached hereto as Exhibit D is a true and accurate copy of the webpage located at <https://www.pinnacle.com/affiliates/faq>, which contains answers to frequently asked questions regarding the Affiliate Program.

15. The Terms and Conditions for the Affiliate Program expressly prohibit Affiliates

from targeting customers located in the United States. Attached hereto as Exhibit E is a true and accurate copy of the first 10 pages of the current Terms and Conditions for the Affiliate Program.

16. Upon information and belief, since exiting the United States market in 2007, Freki has not lawfully sold any goods or services to customers located in the United States.

C. Freki's Trademarks and U.S. Registrations

17. Upon information and belief, Freki has offered and/or continues to offer online gambling, online sports betting and related services under the trademark PINNACLE SPORTS and certain variations, including, without limitation, the trademarks PINNACLE SPORTS AFFILIATES (the "AFFILIATES Mark") and PINNACLE SPORTS DIRECT (the "DIRECT Mark"), and together with the AFFILIATES Mark, the "Freki Marks").

18. Upon information and belief, Freki offered online gambling, online sports betting and related services, including, without limitation, the Affiliate Program, under the Freki Marks in United States commerce until January 11, 2007.

19. Upon information and belief, Freki ceased use of the Freki Marks in United States commerce on or about January 11, 2007, but continued to use the Freki Marks outside of the United States.

20. Upon information and belief, and as stated in the records of the USPTO, on November 8, 2010, by and through its attorney of record, Freki filed applications to register the AFFILIATES Mark (Ser. No. 85171659) and DIRECT Mark (Ser. No. 85171645) (together, the "Applications") pursuant to 15 U.S.C. § 1051(a) in International Class 35 for the following services:

Administration of a program for enabling participants to obtain discounts on products and services; Advertisement for others on the Internet; Advertising and commercial information services, via the Internet; Advertising and directory services, namely, promoting the services of others by providing a web page featuring links to the web sites

of others; Advertising and marketing services, namely, promoting the goods and services of others; Advertising and promotional services; Advertising and publicity services; Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium; Advertising by transmission of on-line publicity for third parties through electronic communications networks; Advertising on the Internet for others; Advertising services; Advertising services, namely, promoting the brands, goods and services of others; Advertising the services of others via web pages optimized for online search engines; Advertising, including on-line advertising on a computer network; Advertising, including promotion relating to the sale of articles and services for third parties by the transmission of advertising material and the dissemination of advertising messages on computer networks; Advertising, promotion and marketing services in the nature of e-mail blast campaigns for others; Contests and incentive award programs to promote the sale of products and services of others; Cooperative advertising and marketing services by way of solicitation, customer service and providing marketing information via web sites on a global computer network; Customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes; Customer service management for others; Customer services, namely, providing customer service and product inquiry services via telephone and e-mail for others; Dissemination of advertising for others via an on-line communications network on the Internet; Dissemination of advertising for others via public and private wireless networks for display on mobile devices; General business networking referral services, namely, promoting the goods and services of others by passing business leads and referrals among group members; On-line advertising and marketing services; On-line advertising on computer communication networks; On-line advertising on computer networks; On-line advertising services for others; On-line promotion of computer networks and web sites; Online advertisements; Online advertising and promotional services; Online advertising via a computer communications network; Online media monitoring services using computer software to automatically monitor Internet web sites and online publications for customer-specified topics and to capture relevant content on those topics, and providing documentation and analysis of that online content to others for business purposes; Promoting the goods and services of others by means of distributing advertising on the Internet; Promoting the goods and services of others by means of the issuance of loyalty rewards cards; Promoting the goods and services of others through search engine referral traffic analysis and reporting; Promoting, advertising and marketing of the on-line web sites of others; Promotion, advertising and marketing of on-line web sites; Providing a web site which features advertisements for the goods and services of others on a global computer network

21. Upon information and belief, when Freki filed the Applications pursuant to Section 1(a) of the Trademark Act, Freki made verified statements that the AFFILIATES Mark and the DIRECT Mark were in use in commerce at the time the Applications were filed.

22. Pursuant to Section 45 of the Trademark Act, as used in the Applications, the term

“commerce” refers to commerce which may be lawfully regulated by United States Congress.

23. On or about June 21, 2011, the USPTO issued registrations for the AFFILIATES Mark (Reg. No. 3981274) and the DIRECT Mark (Reg. No. 3981273).

24. Registration Nos. 3981274 and 3981273 (together, the “Registrations”) are the subject of this Petition.

D. Freki’s Post-Registration Actions

i. AFFILIATES Mark

25. On or about June 1, 2016, Freki announced a rebrand of its company name from “Pinnacle Sports” to “Pinnacle.” Attached hereto as Exhibit F is a true and accurate copy of a press release posted to the Pinnacle Sports Website, announcing the company’s rebrand.

26. Upon information and belief, in connection with this rebrand, Freki removed the term “sports” from the AFFILIATES Mark, changing the mark from PINNACLE SPORTS AFFILIATES to PINNACLE AFFILIATES. Attached hereto as Exhibit G is a true and accurate copy of a press release posted to the Pinnacle Sports Website, announcing the Affiliate Program rebrand.

27. On or about August 12, 2016, Freki filed a combined Section 8 and 15 Declaration with the USPTO in connection with Reg. No. 3981274, stating in relevant part that the AFFILIATES Mark “has been in continuous use in commerce for five consecutive years after the date of registration...and is still in use in commerce on or in connection with all goods/services.” Attached hereto as Exhibit H is a true and accurate copy of this Declaration.

28. The specimen submitted in support of the Section 8 and 15 Declaration for the AFFILIATES Mark purports to be a screenshot of the webpage located at <https://www.pinnacle.com/en/notice/pinnaclesports-affiliates> (the “Affiliates Webpage”), which

contains information about Freki's Affiliate Program under the title "Pinnacle Sports Affiliates." See Exhibit H.

29. Upon information and belief, after filing the Section 8 and 15 Declaration, Freki modified the Affiliates Webpage to add the statement that "Pinnacle Sports Affiliates has now been rebranded to 'Pinnacle Affiliates' in line with our new name – 'Pinnacle.com'." Attached hereto as Exhibit I is a true and accurate copy of the webpage currently located at <https://www.pinnacle.com/en/notice/pinnaclesports-affiliates>.

30. Upon information and belief, the Affiliates Webpage is not accessible through a link on the Pinnacle Sports Website; Internet users must go directly to <https://www.pinnacle.com/en/notice/pinnaclesports-affiliates> to access the page.

31. Upon information and belief, Freki originally created the Affiliates Webpage for the purpose of filing the Section 8 and 15 Declaration and maintaining its registration for the AFFILIATES Mark.

ii. DIRECT Mark

32. Upon information and belief, in or around 2012, Freki ceased using the DIRECT Mark in commerce in any and all jurisdictions.

33. On or about August 12, 2016, Freki filed a combined Section 8 and 15 Declaration with the USPTO in connection with Reg. No. 3981273, stating in relevant part that the DIRECT Mark "has been in continuous use in commerce for five consecutive years after the date of registration...and is still in use in commerce on or in connection with all goods/services." Attached hereto as Exhibit J is a true and accurate copy of this Declaration.

34. The specimen submitted in support of the Section 8 and 15 Declaration for the DIRECT Mark purports to be a screenshot of the webpage located at

<https://www.pinnacle.com/en/notice/pinnacle-sports-direct> (the “Direct Webpage”), which contains information about Freki’s online betting services under the title “Pinnacle Sports Direct.” See Exhibit J.

35. The Direct Webpage features a hyperlink labeled “open an account” that directs Internet users located in the United States to a webpage stating in relevant part: “[b]ased on your detected IP we have determined your location to be within the USA, and must therefore block your access to Pinnacle.” Attached hereto as Exhibit K is a true and accurate copy of this webpage, located at <https://www.pinnacle.com/en/notice/us-block>.

36. Upon information and belief, the Direct Webpage is not accessible through a link on the Pinnacle Sports Website; Internet users must go directly to <https://www.pinnacle.com/en/notice/pinnacle-sports-direct> to access the page.

37. Upon information and belief, Freki created the Direct Webpage for the purpose of filing the Section 8 and 15 Declaration and maintaining its registration for the DIRECT Mark.

II. STANDING

38. Pinnacle has standing to file this Petition for Cancellation because it reasonably believes it will be damaged by the continued registration of the Freki Marks.

39. Pinnacle reasonably believes that, so long as the Registrations are active, the USPTO will refuse to register additional PINNACLE-formative marks in connection with goods or services that overlap with the broad description of services listed in the Registrations.

40. Accordingly, the Registrations preclude Pinnacle from expanding its use and registration of PINNACLE-formative marks.

41. In addition, Pinnacle reasonably believes that continued registration of the Freki Marks may negatively impact Pinnacle’s privileged gaming licenses.

42. Because of the similarities between the Freki Marks and the Pinnacle Marks, gaming authorities may reasonably presume an affiliation between the companies' business activities.

43. Freki's recent rebrand from "Pinnacle Sports" to "Pinnacle" exacerbates the similarities between the parties' marks and increases the likelihood that gaming authorities will mistakenly presume an affiliation between the companies.

44. So long as the Registrations remain active, gaming authorities are likely to believe that Freki is conducting business within the United States, potentially bringing Pinnacle's privileged licenses under scrutiny.

45. For the foregoing reasons, Pinnacle reasonably believes it will be damaged by the continued registration of the Freki Marks and therefore has standing to cancel the Registrations.

III. GROUNDS FOR CANCELLATION

A. Non-Use.

46. Upon information and belief, the Freki Marks were not in use in "commerce"—as that term is defined by Section 45 of the Trademark Act—in connection with any of the services identified in the Applications at the time of filing.

47. Freki filed the Applications pursuant to Section 1(a) of the Trademark Act.

48. Because there was no use of the Freki Marks in commerce when the Applications were filed, the resulting Registrations are void *ab initio*.

B. Abandonment

49. In the alternative, if the Freki Marks were in use in commerce when Freki filed the Applications, upon information and belief, Freki has abandoned the Freki Marks within the meaning of Section 45 of the Trademark Act.

50. Freki has discontinued use of the Freki Marks in commerce with the intent not to resume such use.

51. Freki has not used the Freki Marks in commerce within the meaning of Section 45 of the Trademark Act in the three consecutive years immediately preceding the date of this Petition for Cancellation.

52. Because Freki abandoned the Freki Marks, the Board should cancel the Registrations.

C. Fraud

53. Upon information and belief, Freki obtained the Registrations fraudulently.

54. When Freki filed the Applications, Freki falsely asserted that the Freki Marks were in use in commerce in connection with all of the services identified in the Applications at the time of filing.

55. Freki knew the Freki Marks were not in use in commerce within the meaning of Section 45 of the Trademark Act when it filed the Applications.

56. Upon information and belief, Freki filed the Applications in anticipation of the possible legalization of online gambling in the United States. In doing so, Freki was attempting to reserve priority trademark rights in the Freki Marks in the event it could ultimately reenter the United States market.

57. Freki made express misrepresentations in its Applications with the intention of deceiving the USPTO regarding its use of the Freki Marks.

58. Freki knew that the USPTO would not issue the Registrations if Freki truthfully represented the nature of its use of the Freki Marks.

59. Freki's misrepresentations regarding its use of the Freki Marks were material to

the registrability of the Freki Marks.

60. If the USPTO had been aware of the true nature of Freki's use of the Freki Marks, the USPTO would not have issued the Registrations.

61. Further, Freki has attempted to fraudulently maintain the Registrations through the filing of Section 8 and 15 Declarations with the USPTO, containing false statements.

62. When Freki filed Section 8 and 15 Declarations in connection with the Freki Marks, it knew the Freki Marks were not in use in commerce within the meaning of Section 45 of the Trademark Act.

63. Freki made express misrepresentations in its Section 8 and 15 Declarations with the intention of deceiving the USPTO regarding its use of the Freki Marks.

64. Freki's misrepresentations regarding its use of the Freki Marks are material to Freki maintaining the Registrations.

65. The USPTO would reject Freki's Section 8 and 15 Declarations if the USPTO was aware of the true nature of Freki's use of the Freki Marks.

66. Based on Freki's fraudulent actions, the Board should cancel the Registrations.

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IV. REQUEST FOR RELIEF

WHEREFORE, Petitioner prays that Registration No. 3981274 for the trademark PINNACLE SPORTS AFFILIATES and Registration No. 3981273 for the trademark PINNACLE SPORTS DIRECT be cancelled, and that this Petition for Cancellation be sustained in Petitioner's favor.

Respectfully submitted,

Dated: October 12, 2016

By: /Erin E. Lewis/
Erin E. Lewis
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Attorneys for Petitioner,
Pinnacle Entertainment, Inc.

PROOF OF SERVICE

Julie Obermeyer, an employee of Brownstein Hyatt Farber Schreck, LLP, says that on October 12, 2016, she served copies of this PETITION FOR CANCELLATION upon the following by enclosing the same in a First Class postage paid envelope and depositing it in the U.S. mail:

Juan Chardiet
6867 Elm Street, Suite 101
McLean, Virginia 22101

I declare that the statement above is true to the best of my information, knowledge and belief.

/Julie Obermeyer/
Julie Obermeyer